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to enforce his lien. The court entered a decree enforcing the liens. The general contractor conveyed real estate to the third person; but the deed did not set out the real consideration therefor. The third person, through his manager, executed, pursuant to a settlement, a release of an indebtedness specified due from the general contractor. The manager had no personal knowledge of the terms of the settlement. Held, that the release did not, as a matter of law, constitute a release of the decree obtained by the third person; and the court must require the contractor to elect whether he would prosecute his action at law against the third person for the recovery of money paid pursuant to the decree, or prosecute his right to the money in a proceeding for a rehearing of the cause, as authorized by Code 1904, § 3233; and, where the general contractor elected to prosecute by petition for rehearing, the court must determine the issues on the pleadings and proof.

[Ed. Note.—For other cases, see *Equity*, Cent. Dig. §§ 834-851; Dec. Dig. § 392;* *Election of Remedies*, Cent. Dig. §§ 7-11; Dec. Dig. § 6.*]

Appeal from Circuit Court, Tazewell County.

Petition by T. W. Kirkbride for a rehearing of the cause of action of the Keys Planing Mill Company against him and for the recovery from the company of a sum paid by a receiver pursuant to the decree. From a decree granting the relief prayed for, the Keys Planing Mill Company appeals. Reversed and remanded.

Henry & Graham, for appellant.

Henson & Bowen, for appellee.

NEWBERRY et al. v. DUTTON.

Sept. 9, 1912.

[75 S. E. 785.]

1. Judgments (§ 217*)—Final Judgment—Sufficiency.—Entry by the court, in its regular order book, under the style of the suit in ejectment, of the fact of the jury returning a verdict for defendants, followed by the words, "It is therefore considered by the court that the defendants recover of plaintiff their costs in this behalf," is a sufficient final judgment for defendants as to the lands described and involved in the case, to be determined by consultation of the pleadings.

[Ed. Note.—For other cases, see *Judgment*, Cent. Dig. § 394; Dec. Dig. § 217.*]

2. Judgment (§ 461*)—Suit for Correction—Contradicting Record.—Aside from the question of one having negligently failed to avail himself of his remedy in the action in which the judgment was ren-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

dered against him, barring him of right to maintain a suit in equity for its correction on the ground of mistake therein, he does not show mistake, but contradicts the record, which he may not do, by attempting to show that the issue in the action in which the judgment was rendered was different from what the record thereof shows it was.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. §§ 892-895; Dec. Dig. § 461.*]

3. Equity (§ 427*)—Conformity to Pleading.—There being no pleading asking for such relief, the decree, in a suit for correction of the judgment for defendants in ejectment, for all the land involved therein, is erroneous in awarding defendant affirmative relief by awarding him a writ of possession for the land.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 1001-1014; Dec. Dig. § 427*]

4. Costs (§ 234*)—Costs of Appeal—Reversed in Part.—The decree being erroneous in part, for correction of which appeal was necessary, appellants will be awarded costs, though otherwise the decree is affirmed.

[Ed. Note.—For other cases, see Costs, Cent. Dig. §§ 892-899; Dec. Dig. § 234.*]

Appeal from Circuit Court, Dickenson County.

Suit by Cora Newberry and others against George W. Dutton. From the decree for defendant, plaintiffs appeal. Affirmed in part, and reversed in part.

CARDWELL, J., Absent.

Chase & Daugherty and Sutherland & Sutherland, for appellants.

Vicars & Peery and Columbus Phipps, for appellee.

STACY v. W. M. RITTER LUMBER COMPANY.

Sept. 9, 1912.

[7 Va. App. 93.]

1. Boundaries—Construction of Calls—Straight and Irregular Lines.—The general rule is that where notorious land marks, as corner trees or natural objects, are called for, they are to be regarded as termini, and a straight line is to be run from one terminus to the other without respect to course or distance; but while this is the rule where no other call is found but that to run from one terminus to another, if there are other calls which show that the line was not intended to be straight, as where a call is to run with a river or a public road from one terminus to another, the stream or road, if it

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